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April 4

Louis M. Janelle, Esq.,
City Solicitor
Nashua, New Hampshire

Dear Mr. Janelle:

You have inquired if c. 397, Laws of 1949, deprives the Nashua Board of Education of authority to purchase textbooks and supplies and to provide for school fuel and repairs as conferred upon school boards generally by R.L.c. 135 ss. 12 and 15. Our answer is "no".

Prior to the 1913 revision of the Nashua city charter, c. 427, Laws of 1913, the City of Nashua and the Nashua school district were apparently regarded as separate municipal corporations. See R.L. c. 138 ss. 1 and 2, and legislative history thereof. Any other construction would make c. 227 s. 2, Laws of 1923, meaningless. When the school district functioned as a separate corporation, it was obviously not a department of the City of Nashua. This seems clear by comparing ss. 51 and 74, Part 1, c. 427, Laws of 1913, and the statutes reenacted as R.L. c. 138 ss. 1 and 2. S. 51 provided purchasing procedure for various specified city departments. S. 74, however, refers to the school district, as such, and enacts that the board of education "shall perform all such duties as the school committee in towns are required by law to perform".

Long before 1913 the legislature had authorized school boards to provide necessary fuel and to make necessary repairs to school houses and furniture, and to purchase at the expense of the city or town in which the district is situated, textbooks and other supplies required for use in the public schools. See P.S. (1891) c. 392 ss. 2 and 7, reenacted as R.L. c. 135 ss. 12 and 15. Accordingly there can be little doubt that in 1913 the Nashua Board of Education had such purchasing powers.

Laws of 1923, c. 227 s. 2 amended the Nashua city charter by consolidating the city and school district into a single municipal corporation "with powers for municipal and school purposes, including all the powers of a school district", and also specified that "all provisions of law or of the charter of said city affecting school districts or schools shall, in so far as not inconsistent herewith, continue to apply to said city". This change in corporate status was in keeping with the concept that since municipal corporations are created for purely public purposes, they may be altered,

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modified or divided as the legislature deems public convenience or necessity requires. Clough v. Casgood, 87 N.H. 444. However, c. 74, Part 1, Laws of 1913 pertaining to the board of education was not repealed in 1923, the board was left with its former powers, and those powers are not deemed to be in any way inconsistent with the provisions of c. 227, s. 2, Laws of 1923. Neither was s. 51, Part 1, Laws of 1913, affected. City departments were there labeled as before and the board of education was still treated separately in s. 74 of the same law. Thus the situation remained until 1949.

Two years ago, by c. 397, Laws of 1949, the General Court amended only the said s. 51 by prescribing new purchasing methods for all departments of the city. Again no reference was made to s. 73 dealing with the powers of the board of education, and the language of that section leaves the board charged with the performance of all such duties as the school boards in towns are required by law to perform. Among such duties are those imposed by R.L. c. 135 ss. 12 and 16. The legislature having reexamined the Nashua city charter as recently as 1949 and having made no change in s. 74, Part 1, Laws of 1913, we are compelled to reach the conclusion stated above. The board of education appears to have a unique status. It is a legal subdivision of the Nashua municipal corporation but it has independence far beyond that afforded city departments.

Your second question concerning implications of Nashua's status as a single corporation for all municipal and school purposes appears to be presented abstractly, unrelated to any present problem, and therefore is not answered at this time.

Very truly yours,

Wm. S. Green
Deputy Attorney General

WSG:HP